

(2001) 09 AP CK 0144
In the Andhra Pradesh High Court
Case No : A.A.O. No. 3208 of 1998

Manager, National Insurance Co. Ltd.

APPELLANT

Vs

Smt. Koya Ratnam and Others

RESPONDENT

Date of Decision : 17-09-2001

Acts Referred:

Citation : (2002) 1 ALT 265

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : P.R. Prasad, for the Appellant; B. Parameswara Rao, for the Respondent

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—Respondents 1 to 6 filed O.P.No. 336 of 1988 on the file of the Motor Accidents Claims Tribunal-cum-District Judge, Eluru, alleging that on 12-2-1988 at about 8 a.m. mini van bearing No. AEW. 5472 belonging to the 8th respondent, being driven in a rash and negligent manner by the 7th respondent and insured with the appellant, dashed against K. Ramanjaneyulu (the deceased) resulting in his death. Respondents 1 to 4 are the widow and children and respondents 5 and 6 are the parents of the deceased, who was aged about 33 years and was contributing Rs. 24,600/- per year and claimed Rs. 1,00,000/- from respondents 7, 8 and the appellant.

2. 8th Respondent filed his counter contending that the van was being driven by K. Sriram Murthy, who has a valid driving licence, but not the 7th respondent at the time of the accident and so the compensation, if any has to be paid by the insurer, i.e., the appellant. The 7th respondent adopted the counter of 8th respondent.

3. The appellant filed a counter contending that since the 7th respondent, who has no valid driving licence, was driving the van at the time of the accident, it is not liable to pay any compensation.

4. In support of their case, respondents 1 to 6 examined two witnesses as P.Ws. 1 and 2 and marked Exs.A-1 to A-3. In support of his case, 8th respondent examined one witness as R.W. 1 and appellant examined R.W. 2 and marked Exs.B-1 to B-4 on their behalf, the tribunal held that the accident occurred due to the rash and negligent driving of the mini van bearing No. AEW. 5472 by K. Sriram Murthy and that the respondents 1 to 6 are entitled to Rs. 70,000/- as compensation against 8th respondent and the appellant and dismissed the claim against 7th respondent. It is relevant to mention that appeal against 7th respondent was dismissed due to nonpayment of process. Thus, the order of dismissal of the claim against 7th respondent became final.

5. The point for consideration is whether appellant is not liable to pay the compensation to respondents 1 to 6.

6. The contention of the learned Counsel for the appellant is that the Tribunal was in error in holding that K. Sriram Murthy but not the 7th respondent, was driving the vehicle at the time of the accident, when it is a specific case of the 8th respondent in Ex.B-2, claim form, and Ex.A-2 also shows that the 7th respondent was driving the vehicle involved in the accident at the time of the accident and in any event since K. Sriram Murthy is not made a party to the O.P., the O.P., is not maintainable and since 8th respondent committed a breach of condition of the policy by permitting the 7th respondent who was not having a valid driving licence, to drive the vehicle at the time of accident, appellant is not liable to pay any compensation to respondents 1 to 6.

7. It is now well settled that in a claim for compensation under Motor Vehicles Act, the driver of the vehicle involved in the accident is not a necessary party. So, the contention of the appellant that since K. Sriram Murthy, who allegedly was driving the vehicle at the time of the accident is not made a party, the O.P. is not maintainable has no force and hence cannot be accepted.

8. The finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of the vehicle became final, because the said finding, or the quantum of compensation awarded by the Tribunal is not challenged in this appeal. The only grounds on which the appellant is questioning the award is that since there is a breach of terms of the policy by the owner permitting the vehicle to be driven by a person not having a valid driving licence, it is not liable to pay the compensation.

9. The question as to who was driving the vehicle at the time of the accident is not very relevant for deciding the eligibility of respondents 1 to 6 to claim compensation from 8th respondent and the appellant. So, the Tribunal, or this Court giving a finding as to who was driving the vehicle at the time of accident, i.e., whether it was 7th respondent or K. Sriram Murthy that was driving the vehicle at the time of the accident is unnecessary for deciding the O.P. So, the finding of the Tribunal as to the person driving the vehicle at the time of accident is set aside, as unnecessary. As stated above since the finding of the Tribunal on

the question of rash and negligent driving and the quantum of compensation are not challenged, those findings became final.

10. The point for decision in this appeal is no longer *res integra* in view of *New India Assurance Company v. Kamla*, 2001 AIR SCW 1340, where the Supreme Court held in Para 22 at Pages 1345 and 1356 as follows:

"To repeat, the effect of the above provision is this: When a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance the burden is on the insurer to pay to third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured, if as per the policy conditions the insurer had no liability to pay such sum to the insured."

11. Since the insurance of the vehicle involved in the accident with the appellant is admitted, and since the claim arose in connection with the death of the third party, appellant is bound to satisfy the claim of respondents 1 to 6. After establishing that 7th respondent was driving the vehicle, and that 7th respondent was not having a valid driving licence at the time of accident, appellant can recover the amount paid by it to the respondents 1 to 6 from the 8th respondent but it cannot avoid liability to respondents 1 to 6. Therefore, the contention of the appellant that it is not liable to pay compensation to respondents 1 to 6 has no force and is to be rejected. The point is answered accordingly.

12. In the result, the appeal is dismissed without costs, holding that the appellant who also is liable to pay the compensation awarded to the respondents 1 to 6, is at liberty to proceed against the 8th respondent, after establishing that 7th respondent was driving the vehicle at the time of the accident that there was a breach of the terms and conditions of the insurance policy.